Supreme Court U.S.
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No: _____

IN THE

SUPREME COURT OF THE UNITED STATES

ZOL HOOPER - PETITIONER

vs.

CITY OF MURFREESBORO - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF TENNESSEE, MIDDLE DIVISION

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1: Whether it is mandatory for a State to comply with the National Manual For Uniform Traffic Control Devices (MUTCD), as published by the Federal Highway Administration (FHWA), when setting, posting and maintaining speed limits?

2: Whether the term "should" as used in the MUTCD, is distinct from the terms "shall" (used to signify unconditionally mandatory requirements) and "may" (used to signify purely optional actions)?

3: Whether the State may enforce speed limits per se if they are not set, posted or maintained in conformance with the MUTCD?

LIST OF PARTIES

All parties to the proceeding are named in the caption of this case.

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CITATION OF OPINIONS AND ORDERS ENTERED IN THE CASE:

City of Murfreesboro v. Zol Hooper, Circuit Court for Rutherford County, Tennessee, at Murfreesboro, No. 53483, Order Dismissing Appeal, filed September 6, 2006.

City of Murfreesboro v. Zol Hooper, Court of Appeals of Tennessee at Nashville, June 12, 2007 Session, No. M2006-02050-COA-R3-CV, Memorandum Opinion filed August 14, 2007.

City of Murfreesboro v. Zol Hooper, Supreme Court of Tennessee at Nashville, Circuit Court for Rutherford County, No. 53483; No. M2006-02050-SC-R11-CV, Order denying application for permission to appeal filed November 13, 2007.

BASIS FOR JURISDICTION

The date on which the Tennessee Supreme Court, the highest state court, decided this case was: November 13, 2007. A copy of that Order denying permission to appeal appears at Appendix D.

No petition for rehearing nor extension of time was sought.

Rule 12.5 was not relied upon.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

TABLE OF AUTHORITIES

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article I, Section 8, (Powers of Congress)

> Clause 3: To regulate Commerce ... among the several States...
>
> Clause 7: To establish Post Offices and Post Roads.

Article VI, Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Code Title 23 - Highways

23 U. S. C. Chapter 3 - General Provisions

> Section 315. Rules, regulations, and recommendations
>
> ... the Secretary [of Transportation] is authorized to prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this title. The Secretary may make such recommendations to the Congress and State transportation departments as he deems necessary for preserving and protecting the highways and insuring the safety of traffic thereon.

23 C. F. R. 655.603 (April 1, 2005 Edition)

(a) National MUTCD. The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U. S. C. 109(d) and 402(a). ...

Manual on Uniform Traffic Control Devices, Federal Highway Administration, Revision 1, November 2004. (Published by the FHWA on the MUTCD Web Page; the FHWA does not publish the manual in hard format. Pertinent portions are in Appendix hereto; the full Manual is available on the internet at: http://mutcd.fhwa.dot.gov.)

AUTHORITIES – CASE LAW

No case law has been directed at the questions presented.

STATEMENT OF THE CASE

Nature of the Case

Petitioner Zol Hooper was cited by Murfreesboro police officer Kyle Evans for driving 50 miles per hour in a speed zone posted with a speed limit of 40 miles per hour on Rutherford Boulevard in the City of Murfreesboro, Tennessee, on March 1st, 2006. (Record, P. 6-7.) No other charge was made.

Course of the Proceedings - Municipal Court, Murfreesboro, Tennessee

On April 4th, 2006, defendant appeared in the City Court of Murfreesboro to contest his citation, pleading not guilty. The court found him guilty of the offense charged and imposed the appropriate fine and costs.

Federal Issue Raised - Circuit Court, Rutherford County, Murfreesboro, Tennessee

Defendant timely appealed this finding to the Circuit Court for Rutherford County. The hearing was held on August 9th, 2006, de novo on all issues of fact and law, with Judge Robert E. Corlew, III, presiding.

The hearing raised no controversy of fact regarding Defendants' actual speed. Examination of the City Traffic Director, Dana Richardson, by counsel for the

City established that the speed limit for that part of Rutherford Boulevard had been set in 1990 following an engineering study. Record, P. 13. The engineering study was necessitated by an increase in traffic volume, and was followed by raising the prior limit of 30 mph to 40 mph in the zone where Mr. Hooper's citation was issued. The study had been conducted in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), as published by the Federal Highway Administration (FHWA). Record. P. 14.

Upon cross-examination, Mr. Richardson established that the road in that segment had been designed for a speed of 50 mph. Record, P. 18.

The citing officer, Officer Kyle Evans, testified that that segment of road had a significant volume of traffic that traveled at speeds exceeding the posted limit of 40 mph. Record, P. 10, P. 29.

Mr. Richardson testified that he had informed the City, when the speed limit was posted in 1990, that:

> "While vehicles may be exceeding the posted speed limit, the problem may not always lie with the drivers, but with the speed limit itself. It is therefore the job of the Engineering Department to gather the data necessary to make these determinations and evaluations." Record, P. 19.

He had written in that 1990 action that:

> "After approximately one year of operation under the new speed postings, studies will again be done to evaluate speed changes at the same locations previously used." Record, P. 19.

Cross-examination of Mr. Richardson further established that the study which set the speed limit in 1990 was the "most current study along that stretch of road." Record, P. 16. No further engineering study had been performed in the 16 years that had passed since then, as noted in the conclusions of the Court:

> "I understand your contention there, that the city contends of course that the last study was done in 1990. That's why this is here; since there hasn't been a study since 1990." Record P. 38.

Further testimony established that the MUTCD states:

> "At least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on sections of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review." Record, P. 20, referring to MUTCD § 2B.13.

There was disagreement whether the 16 years of changes at either end of the Boulevard amounted to

"significant change," but, in the end, the Court stated:

> "If we find, and I'm not there, that the study should have been done, then we come to the conclusion certainly that the city's in violation of this." Record, P. 39

The gravamen of Hooper's argument was:

> " ... what we have in this particular case is a traffic study that was done when the defendant was a three-year-old toddler, a study that was done anticipating that an update would be done within a year; and with a Federal Code that requires them to be done every five years, has not been done in sixteen. ... the law has not been followed with respect to keeping engineering studies and other factors properly evaluated, periodically, in that stretch of road. ... he has not, not violated a currently applicable speed limit. That's the totality of the case, your Honor." Record P. 32 - 33.

Disposition in the Circuit Court

The Court, after pondering at length the requirements of the MUTCD and the facts which related to it, turned its attention to the public policy issues it felt were more important:

> "I think in short, I think I still have to come back to the policy issue before me, my decision,

> to determine whether to enforce the speed limits or not enforce; and I understand that the - the fact that we need a speed limit. ... I don't think I could find that the speed limits, the posted speed is invalid; and since it is not invalid, of course, I think I must find the defendant guilty." Record, P. 41.

The Order Dismissing Appeal was filed in the Circuit Court on September 6th, 2006.

Tennessee Court of Appeals, Nashville, Tennessee

Defendant/Appellant, Mr. Hooper, filed his Notice of Appeal from the Circuit Court on September 22nd, 2006, asserting that failure to comply with the MUTCD voids the enforceability of a traffic control device, and the court should therefore have dismissed the speeding citation, as he urged in the hearing in the court below. (Record, P. 32-33.)

Argument was presented in the Court of Appeals of Tennessee for the Middle Division on June 12, 2007 and the Court of Appeals filed their Final Memorandum Opinion on August 14th, 2007, affirming the judgment of the trial court. The Court wrote:

> "Finally, and most importantly, even if the MUTCD were mandatory and regulated the setting of speed limits ... Hooper cites no authority to support his assertion that a failure ... to timely reevaluate the speed limit

> renders the posted speed limit invalid and voids his speeding ticket." Opinion, P. 4.

This position, in summary, holds that the MUTCD is not mandatory; it does not regulate the setting of speed limits, and, even if the MUTCD had such authority, the speed limit would remain valid without complying with the MUTCD.

Supreme Court of Tennessee

Application for Permission to Appeal was timely submitted to the Supreme Court of the State of Tennessee, on the basis that the Court of Appeals did not properly construe the MUTCD.

The Supreme Court of Tennessee filed its order denying permission to appeal on November 13th, 2007.

REASONS FOR GRANTING THE WRIT

PUBLIC CONFIDENCE IN THE LAW

The traffic stop is perhaps the most common personal experience the average citizen has with the police power of the State. This experience, repeated many thousands of times each year in every state, is a fundamental building block for establishing respect - or disrespect - for the "Laws of the land" and the governments which enforce them.

For this reason, it is critical that the citizen has confidence that the police power they experience personally is exercised in conformance with all applicable laws.

Popularization of the term "speed trap" suggests that some segments of the population are not confident with the way speed laws are established or enforced. To the extent that the laws being enforced are founded on Federal authority, the frequency of this event makes it "an important question of federal law" which, if it has not yet been, should be settled by the Supreme Court of the United States.

FEDERAL AUTHORITY

The establishment of "post roads" and the regulation of "interstate commerce" are fundamental purposes for which our Constitutional government was formed. Congress has deemed that this power encompasses the highways across the country, and has found the establishment of operating regulations and the

postings of them to be a necessary and proper component of the power conferred. It has established a federal agency, the Federal Highway Administration (FHWA), to administer this authority, and the FHWA has promulgated regulations setting uniform standards for highway design and operation, including the signage.

THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)

- MUTCD TERMINOLOGY

The controversy in this case focuses entirely on the wording, scope and authority of the National Manual on Uniform Traffic Control Devices (MUTCD), the FHWA's publication setting forth the rules for highway signage and the engineering principles upon which they are founded.

The Trial Court wrestled with the terminology and effect of the MUTCD. The transcript almost takes on the character of a plea for help:

> "... I was not familiar with the, MT, CD - ... until this suit. ... based upon the arguments that you've made on this section 2B-13 it's probably the key factor for us to consider here this afternoon. ... 2B-13 it appears we have most of these headings also; "standards" with "guidance"; "options" finally, there appears to be further "guidance," and, in the end, "support."
>
> "I will acknowledge to you, again, that I have some question as to what is mandatory under the provisions of the state law ... The rules of the State Department of Transportation provide for setting speed limits. Tennessee's rules will govern signs and locations involving signs, signals that are to be posted and such things on or along streets and highways. [The Tennessee Department of Transportation

> regulation refers to the] Manual on Uniform Traffic Control Devices, the MTCD ... "
> "And I guess I'm still left to my own consideration as to whether to consider just the "standard" being mandatory, or the "standard" and the "guidance", or the "standard" and the "guidance" and the "support." ..."
> "... The question I have is, is the, "should", that's in guidance, is that binding? Or is it just the "standard" that's binding? ..."
> "With all due respect to the Federal level, to Congress, the MUTCD itself is not well written, in my humble opinion. Maybe they would say the same thing about some of my humble opinions as well. ... Maybe, with all due respect, this whole section may mean more to traffic engineers perhaps than it does to us lawyers and judges. ..." Record, P. 35 ff.

In the end, this court was not able to sort out the different levels of obligation presented in the MUTCD, and decided the case as a matter of public policy - and by so doing, controverted the authority of Congress.

- DEARTH OF MUTCD-RELATED PRECEDENT

Much of the challenge in this case derives from the absence of precedent on the issue of the authority of the MUTCD. When Mr. Hooper argued that the MUTCD itself is mandatory, the City pointed out:

> "Would it please the Court, we have no case law." Record, P. 32.

In reviewing the case, the Tennessee Court of Appeals avoided the task of clarifying the distinctions between the elements of the MUTCD which had so frustrated the Circuit Court, simply stating that:

> "... the MUTCD provision upon which he relies uses language that is not mandatory, stating only that the speed limits "should" be reevaluated every five years... Hooper cites no authority to suggest that "should" must be read as "shall" in this context." Opinion. p. 4.

The Court of Appeals left the issue without identifying precedent authority. It rejected the idea that there might be some level of obligation that lies between the mandatory "shall" and the permissive "may," despite the differing uses of these three terms throughout the MUTCD. It simply applied the term "should" as if it were a "may," which is just as unjustifiable as treating it as a "shall."

- SCOPE OF THE MUTCD

The Court of Appeals went even further to limit the authority of the MUTCD by confining its scope to the configuration of signs. Their construction of the MUTCD denied the power of the regulation over the setting of traffic rules such as speed limits:

> "... the MUTCD was adopted by Tennessee as a 'manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee ...; it regulates the use of signs, signals, and other devices, not the setting of speed limits." Opinion, P. 4.

- AUTHORITY OF THE MUTCD

The combined efforts of the Tennessee courts in this case have had the effect of drawing into question the validity of the Manual on Uniform Traffic Control Devices, one of Congress' most important statutory schemes for bringing order to the national highway system.

SUPREME COURT RESOLUTION NEEDED

In this case, the courts of the State of Tennessee have decided a question of federal law which is important because it directly affects every person who uses the nation's roads, and it is the foundation for the most common interaction between normal citizens and the police power of their government, the traffic stop. The statements of the courts in this case have highlighted the absence of federal guidance on the subject. More compelling, they have come to conclusions that conflict with the plain meaning of the controlling federal regulation. If the United States Supreme Court does not intervene, Tennessee will continue to hold the authority of Congress manifested in the MUTCD as an optional guide,

limited to posting of signs without any traffic engineering authority, and only provisions using the word "shall" having any obligatory effect.

MUTCD TERMINOLOGY STANDARDS PROVIDED

The terms which so confounded the Circuit Court are defined in the Introduction to the MUTCD:

> "Throughout this Manual the headings Standard, Guidance, Option, and Support are used to classify the nature of the text that follows.
>
> 1. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. ... The verb shall is typically used. Standards are sometimes modified by Options.
> 2. Guidance—a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. ... The verb should is typically used. Guidance statements are sometimes modified by Options.
> 3. Option—a statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. ... The verb may is typically used.

> 4. Support—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. ... The verbs shall, should, and may are not used in Support statements."
> MUTCD, Page I-1, I-3.

These definitions clearly show that the "should" which is relied upon by the petitioner has been designated by Congress as a term that embodies some element of obligation, which distinguishes it from the "may" of merely permissive actions; but does not raise it to the inflexible compulsion wielded with the use of the term "shall."

Petitioner has argued that the "Guidance" definition shows that the actions that "should" be taken are "not mandatory" only because "deviations [are] allowed if engineering judgment or engineering study indicates the deviation to be appropriate." The City, in this case, was obligated to perform a reevaluation of the Rutherford Boulevard speed zone, as put forth in the MUTCD, unless "engineering judgment" had concluded that some other action was more appropriate. But no such "engineering judgment" was ever made to preempt the MUTCD "guidance," and that is why the speed limit, Hooper urges, had lapsed.

There is no precedent to confirm either this argument or the argument of the Court of Appeals that the only choice for "guidance" statements, since they do not invoke the term "shall," is to leave them

as options, equating the terms "should" and "may." This solution offered by the Court of Appeals plainly defeats the legislative intent of Congress, which distinguishes these terms.

MUTCD SCOPE INCLUDES SETTING SPEED LIMITS

The constraints which the Court of Appeals put on the authority of the MUTCD over how speed limits are to be set again conflict directly with the provisions of the MUTCD.

MUTCD Section 2B.13 states:

> 1: That the posting of a speed limit is authorized only "after an engineering study has been made in accordance with established traffic engineering practices": Such studies determine what speed limit is to be "set."
>
> 2: That "The speed limits shown shall be in multiples of ... 5 mph." This is a criterion for "setting" a speed limit.
>
> 3: That "At least once every 5 years, States and local agencies should reevaluate non-statutory speed limits." This criterion determines whether a speed limit is "set" at an appropriate level.
>
> 4: That "when a speed limit is posted, it should be within ... 5 mph of the 85th-percentile speed of free-flowing traffic." This criterion is the most favored quantitative foundation for "setting" speed limits across the nation.

5: That "Other factors that may be considered when establishing speed limits are the following:

A. Road characteristics, shoulder condition, grade, alignment, and sight distance;

B. The pace speed;

C. Roadside development and environment;

D. Parking practices and pedestrian activity;

E. Reported crash experience for at least a 12-month period."

The clear function of these provisions of the MUTCD is to exert a controlling power over how speed limits are "set" before they are posted. To posit that the MUTCD "regulates the use of signs, signals, and other devices, not the setting of speed limits" (Opinion. P. 4.) is to deny these provisions, which were promulgated under the authority of Congress.

MUTCD INTERACTION WITH STATE LAW

The Court of Appeals pointed out correctly that the Tennessee Code authorizes the State Department of Transportation, county authorities, and municipalities to establish speed limits. (T. C. A. §55-8-152; see also Speed Zones, T. C. A. §55-8-153.) There is no conflict between the MUTCD and the Tennessee Code because the authority conferred by the code allows that speed limits may be set; it does not dictate or limit how they are to be set. The requirements of the MUTCD can be fully satisfied

under this authority. But the Circuit Court and the Court of Appeals failed to integrate the federal authority with that of the State as Congress intended:

> "The responsibility for the design, placement, operation, maintenance, and uniformity of traffic control devices shall rest with the public agency or the official having jurisdiction. 23 CFR 655.603 adopts the Manual on Uniform Traffic Control Devices as the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. ... " MUTCD §1A.07.
>
> "All regulatory traffic control devices shall be supported by laws, ordinances, or regulations." MUTCD §1A.08.

PUBLIC POLICY - AS PERCEIVED BY STATE COURTS

Unable to untangle the unfamiliar use of terms in the MUTCD, the Circuit Court turned to consider the public policy issues as it saw them, and concluded the case on that basis:

> "I think in short, I think I still have to come back to the policy issue before me, my decision, to determine whether to enforce the speed limits or not enforce; and I understand that the - the fact that we need a speed limit. So I think I come to the bottom line that while I really appreciate the education that you folks have given me. Certainly this has been pretty instructive to me and ... I don't think I could

find that the speed limits, the posted speed is invalid; and since it is not invalid, of course, I think I must find the defendant guilty." Record, P. 41.

Following the same line of thought, the Court of Appeals wrote:

> "Finally, and most importantly, even if the MUTCD were mandatory and regulated the setting of speed limits for the City, Hooper cites no authority to support his assertion that a failure by the City to timely reevaluate the speed limit renders the posted speed limit invalid and voids his speeding ticket. If we were to adopt Hooper's reasoning, taken to its logical conclusion, this would mean that the posted speed limit for any road not timely reevaluated by the municipality would automatically become invalid. Such roads would effectively have no speed limit, and the municipalities would be left unable to protect the public safety and welfare. We respectfully decline to adopt this argument." Opinion. P. 4.

PUBLIC POLICY - AS ESTABLISHED BY CONGRESS

In the absence of controlling precedent, the courts may be excused for resorting to principles of public policy in resolving this case. But here, again, they have erred, because the policy they have settled upon conflicts with public policy decisions that have already been formed by Congress.

The importance of establishing a speed limit and enforcing it was the basis for these conclusions, and is shared with the judgment of Congress. But Congress has looked more deeply into the question, and has placed restraints on the processes by which speed limits are established. Where the courts in this case have concluded that any speed limit is O. K., Congress has concluded that speed limits must have a foundation in established engineering practices. Congress has gone so far as to state that even the Standards of the MUTCD "shall not be a legal requirement for [installation of traffic control devices.]" But when the devices are to be employed,

> "The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment.
> "... Jurisdictions with responsibility for traffic control that do not have engineers on their staffs should seek engineering assistance from others, such as the State transportation agency, their County, a nearby large City, or a traffic engineering consultant." MUTCD § 1A.09.

The Congressional mandate on the use of speed limits reinforces this formulation of policy by

predicating the posting of a speed limit upon engineering standards used in the prior determination of the appropriate limit:

> "After an engineering study has been made in accordance with established traffic engineering practices, the Speed Limit (R2-1) sign (see Figure 2B-1) shall display the limit established by law, ordinance, regulation, or as adopted by the authorized agency." MUTCD §2B.13.

The policy of Congress is that engineering studies and judgment are necessary to determine what speed limits are necessary; only then are the speed limits to be posted and supported by appropriate state or local legislation. In this manner Congress has decreed that whimsey, politics, and wild guesses do not suffice to set a speed limit.

The fears expressed in the Opinion by the Court of Appeals have emotional appeal; but the Tennessee Code has adequate provisions to prevent the hazards to public safety imagined by the Court. T. C. A. § 55-10-205 prohibits outright reckless driving and imposes appropriate sanctions at law; and T. C. A. 55-8-136 (b) deals with less onerous lapses of driver caution:

> "Notwithstanding any speed limit or zone... every driver of a motor vehicle shall exercise due care... by operating such motor vehicle at a safe speed, ... under the existing circumstances to avoid endangering life, limb or property."

CONCLUSION AND PLEA

NECESSITY FOR SUPERVISION BY THE SUPREME COURT OF THE UNITED STATES

Congress has fulfilled its Constitutional obligations by establishing a sensible policy regarding setting and posting speed limits; the MUTCD is the mechanism by which this was done. The Tennessee Legislature has done its duty by providing the framework for the State and its subdivisions to regulate the roads within their jurisdiction, and has done so in a way that accommodates the MUTCD.

But the courts in this case have substituted their own impressions of what public policy is needed, and have given it the effect of law. By coming up with their own variation of what public policy should be, and disregarding the policy already decided and published by Congress in exercise of their enumerated powers, the courts of Tennessee have run afoul of Article VI of the Constitution of the United States:

> Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...

To remedy this error, and to give effect to the efforts of Congress to satisfy their Constitutional duty

regarding highways, the authority of the United States Supreme Court in this case is necessary.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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CITY OF MURFREESBORO - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF TENNESSEE, MIDDLE DIVISION

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX E — Manual on Uniform Traffic Control Devices (MUTCD)(Cited Sections only)

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§ 2B.13 Speed Limit Sign (R2-1) — P. 35
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APPENDIX F — Tennessee Statutes

Tennessee Code Annotated
54-5-108. Cooperation by department with federal government in designating roads, and in erection of danger signals and safety devices. — P. 39

55-8-136. Drivers to exercise due care. — P. 40
55-8-152. Speed Limits - Penalties — P. 40
55-8-153. Establishment of speed zones. — P. 42
55-10-205. Reckless driving. — P. 43

RULES OF TENNESSEE DEPARTMENT OF TRANSPORTATION

Chapter 1680-3-1
Adoption of the Tennessee Manual on Uniform Traffic Control Devices for Streets and Highways
P. 44

APPENDIX A: Decision of State Court of Appeals:

This is a "Memorandum Opinion," designated by the issuing court to not be published.

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 12, 2007 Session
CITY OF MURFREESBORO v. ZOL HOOPER
An Appeal from the Circuit Court for Rutherford County
No. 53483 Robert E. Corlew, III, Judge
No. M2006-02050-COA-R3-CV - Filed on August 14, 2007

This is a challenge to a speeding ticket. A city police officer issued a speeding ticket to the defendant for traveling at a speed in excess of the posted speed limit of forty miles per hour. The traffic court found the defendant guilty of the offense and ordered him to pay a fine and costs. The defendant appealed his conviction for the traffic offense to the circuit court below. In the circuit court, defendant argued that his speeding ticket was void because the posted speed limit was invalid, based on the fact that the City had failed to reevaluate the appropriate speed limit for that portion of the street. The trial court rejected that argument, concluding that the City's failure to reevaluate the speed limit on the road in question did not invalidate the posted speed limit. Thus, the trial court affirmed the defendant's conviction for violation

of the speed limit. The defendant now appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Hal Rounds, Somerville, Tennessee, for the appellant, Zol Hooper.

Richard W. Rucker, Murfreesboro, Tennessee, for the appellee, City of Murfreesboro.

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MEMORANDUM OPINION[1]

On March 1, 2006, Officer Kyle Evans, a police officer for the Petitioner/Appellee City of Murfreesboro ("City"), issued a speeding ticket to Respondent/Appellant Zol Hooper ("Hooper") for driving fifty miles per hour in a forty mile per hour speed zone on Rutherford Boulevard in Rutherford County, Tennessee. On April 4, 2006, Hooper appeared in traffic court and pleaded "not guilty" to the offense. After a hearing, Hooper was found guilty of speeding, and the traffic court imposed a fine and costs against him.

Hooper appealed the traffic court decision to the Rutherford County Circuit Court. On August 9, 2006, the circuit court conducted a *de novo* hearing.

At the hearing, Hooper conceded that he had been driving in excess of the posted speed limit. He argued, however, that the posted speed limit was invalid because the City had not conformed to the requirements in the Manual on Uniform Traffic Control Devices (MUTCD).

At the hearing, the circuit court heard testimony from Hooper and Officer Evans related to the ticketing incident on March 1, 2006. Officer Evans testified that he had actually "clocked" Hooper as driving fifty-five miles per hour on that day, but he reduced the charge to driving fifty miles per hour in a forty mile per hour zone. Officer Evans testified that drivers speeding on that section of Rutherford is a common occurrence. In his testimony, Hooper admitted that he was driving fifty-five miles per hour when he was ticketed. He testified that the posted speed limit was established when he was two years old, and that there had been much development in the area since that time. He noted that, in the interim, four large churches, an apartment complex, and a Wal-Mart had been built on or near Rutherford Boulevard. In addition, the local college had built a parking lot on that road.

Dana Richardson ("Richardson"), a traffic director with the City, also testified at trial. Richardson said that he performed a traffic study of Rutherford Boulevard and issued a report on that study on January 23, 1990. He explained that, prior to the study, the speed limit on the road was thirty miles per hour. Growth in the area, traffic congestion, and other factors triggered the new study. As a result, the speed limit was increased; on some parts of the road it was increased to forty miles per hour and on other

parts it was increased to forty-five miles per hour. The report indicated an intent to reevaluate the new speed limits on Rutherford after one year. This was not done, and no further study was conducted after the 1990 study. Richardson said that, although there had been some new development along Rutherford, he felt that the conditions on the road had not changed significantly since January 1990 so as to necessitate another study.

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[1] Rule 10. MEMORANDUM OPINION
This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

During Richardson's testimony, a copy of the 2003 version of the MUTCD was entered into evidence. Richardson testified that the new speed limit for Rutherford was set in accordance with the MUTCD, which was developed by the Federal Highway Administration and was adopted by the State of Tennessee. Richardson described the MUTCD as the authority for posting speed limits, and said that the MUTCD "controls all aspects of how to use signs." Hooper's counsel had Richardson read from the MUTCD, which states that "[a]t least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on [segments] of their

roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review."

At the conclusion of the hearing, the trial court found that, even if the City had failed to reevaluate the speed limit on Rutherford in accordance with the MUTCD, the posted speed limit remained valid for purposes of enforcing the speeding ticket issued against Hooper. The trial court indicated that, even assuming that the MUTCD was mandatory, it was unclear whether Rutherford Boulevard had "undergone a significant change in roadway characteristics" so as to require a reevaluation of the speed limit since 1990. Ultimately, the trial court concluded that, regardless of whether the City had complied with the MUTCD, "we need a speed limit . . . I don't think I could find that . . . the posted speed limit is invalid." Therefore, it affirmed the traffic court's determination that Hooper was guilty of speeding as cited in his ticket. From this order, Hooper now appeals.

On appeal, Hooper again challenges the speeding ticket issued to him, arguing that the speeding ticket is void because the City failed to comply with the MUTCD requirement that the speed limit on Rutherford be reevaluated. In addressing this issue, we review the trial court's findings of fact *de novo*, presuming those findings to be correct, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). We review questions of law *de novo*, without any such presumption of correctness. ***Id.***

Pursuant to Tennessee Code Annotated § 54-5-108, the Tennessee Department of Transportation ("TDOT") has the power "to formulate and adopt a

manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee . . . ." T.C.A. § 54-5-108(b) (2004). Rather than formulating its own manual for these purposes, Tennessee has adopted the standards set forth in the MUTCD, which was published by the Federal Highway Administration. ***See Fowler v. Henderson***, Nos. W2002-02529-COA-R3-CV, W2003-02862- COA-R3-CV, 2003 WL 23099686, at *5 (Tenn. Ct. App. Dec. 31, 2003).

As noted above, the provision of the MUTCD upon which Hooper relies provides that, "[a]t least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or

surrounding land use since the last review."[2] Hooper claims that, based on this language, the City was required to reevaluate the relevant portion of Rutherford because the road has undergone significant changes since the January 1990 study was performed. Because such a reevaluation was not performed, he argues, the speed limit posted is invalid, and his ticket is void.

Hooper's argument is without merit. First, the MUTCD provision upon which he relies uses language that is not mandatory, stating only that the speed limits "should" be reevaluated every five years under certain conditions. Hooper cites no authority to

suggest that "should" must be read as "shall" in this context.

Second, the MUTCD was adopted by Tennessee as a "manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee . . . .; it regulates the use of signs, signals, and other devices, not the setting of speed limits. T.C.A. § 54-5-108 (2004); ***see, e.g., Begley v. State***, 162 S.W.3d 535, 538 (Tenn. Ct. App. 2004); ***Atkins v. State***, No. E2003-01255-COA-R3-CV, 2004 WL 787166, at *2 (Tenn. Ct. App. Apr. 14, 2004). It is undisputed that municipalities such as the City of Murfreesboro are authorized by statute "to set speed limits on the public roads and streets within their jurisdiction. . . ." T.C.A. § 55-8-152(f)(1)(C); ***see also*** T.C.A. § 55-8-153 (2004).

Finally, and most importantly, even if the MUTCD were mandatory and regulated the setting of speed limits for the City, Hooper cites no authority to support his assertion that a failure by the City to timely reevaluate the speed limit renders the posted speed limit invalid and voids his speeding ticket. If we were to adopt Hooper's reasoning, taken to its logical conclusion, this would mean that the posted speed limit for any road not timely reevaluated by the municipality would automatically become invalid. Such roads would effectively have no speed limit, and the municipalities would be left unable to protect the public safety and welfare. We respectfully decline to adopt this argument.

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant Zol Hooper and his surety, for which execution may issue, if

necessary.

HOLLY M. KIRBY, JUDGE

[2] As the trial court noted, the regulations in the MUTCD are set out under three subheadings, which are called "standards," "guidance," and "options." The trial court also correctly noted that the applicable provision in this case falls under the heading of "guidance."

APPENDIX B: Decision of the Circuit Court of Rutherford County, as transcribed for the Record.

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

CITY OF MURFREESBORO	)	
	)	
Plaintiff	)	
	)	CASE NO. 53483
vs.	)	
	)	
ZOL HOOPER	)	
	)	
Defendant	)	
	)	

BE IT REMEMBERED that the above-captioned cause came on for proceedings on the 9th day of September, 2006, in the above Court, before the Honorable Robert E. Corlew, Judge presiding, when and where the following proceedings were had, to wit:

Hal Rounds, BPR No. 017146
P. O. Box 342
Somerville, TN 38068
(901) 485-5451

(Findings of fact and conclusions of law only are provided herein; full transcript available upon request.)

Findings of Fact and Conclusions of Law of the Circuit Court, commencing on page 35 of the Record:

JUDGMENT

THE COURT: Interesting suit counsel, and interesting issues. I will acknowledge to you that you've given me an education this afternoon. I was not familiar with the, MT, CD -

MR. ROUNDS: The MUTCD. It's the Manual on Uniform Traffic Control Devices, your Honor.

THE COURT: I was not familiar with that until this suit. I appreciate you folks' education. I, acknowledge to you that I suppose I could understand the, based upon the arguments that you've made on this section 2B-13 it's probably the key factor for us to consider here this afternoon. I do know that there are several parts, the, standards - the most, the majority of the sections have a listing of guidance and options. I do notice on some of the others, 2B-11 for example, on the second page - standards and no guidance and no options. 2B-12 it appears that there is no "standard," but perhaps there is a "standard" but the "options" are just above the "standard" perhaps. 2B-12 there is "options," there's a "standard," and then there's the "support." 2B-13 it appears we have most of these headings also; "standards" with "guidance" ; "options" finally, there appears

to be further "guidance," and, in the end, "support."
I will acknowledge to you, again, that I have some question as to what is mandatory under the provisions of the state law and what's mandatory under the provisions of the city code. The rules of the State Department of Transportation provide for setting speed limits. Tennessee's rules will govern signs and locations involving signs, signals that are to be posted and such things on or along streets and highways. [And the Tennessee Department of Transportation regulation refers to the] Manual on Uniform Traffic Control Devices, the MTCD - the next section underneath that, it simply says - .
And I guess I'm still left to my own consideration as to whether to consider just the "standard" being mandatory, or the "standard" and the "guidance", or the "standard" and the "guidance" and the "support."
And you did some of the, of the Google on that-
MR. ROUNDS: May I offer?-
THE COURT: Do you consider - I suppose I will ...
MR. ROUNDS: There is a web page that's provided with the MUTCD, and it talks about the frequently asked questions. One of them is "substantial conformance": what does that mean?
THE COURT: Okay
MR. ROUNDS: And it says here-
THE COURT: Do you agree that that's authoritative?
MR. RUCKER: No, no. I agree that he can enter it, I agree that he can make an argument out of it.
THE COURT: I hear so much about people who get on the internet. I'm not sure I

believe much that I read on that there.
MR. ROUNDS: Well I've offered the website address on the top. If you want to check it out. Again, I have the same doubts sometimes, that you do. But this one I trust; was provided, that's where I also got the main part of the MUTCD. And it says here when it's talking about States supplementing the MUTCD, it says that supplements in MUTCDs cannot omit or change in the actual MUTCD [a] *"shall"* to a *"should"* or change a *"should"* to a *"may."* What that's telling us is that *"the study should be done"* cannot be interpreted as *"they may be done."* That's, I just offered to help you on that, on the question you had.
THE COURT: The question I have is, is the, *"should"*, that's in guidance, is that binding? Or is it just the "standard" that's binding? I don't know if the, under 2-13 that the standard says, "after an engineering study has been made in accordance with established traffic engineering practices, the speed limit sign shall display the limit established by law ordinance or regulation or as adopted by the authorized agency. The speed limit shall be shown in multiples of ten,-
MR. ROUNDS: Ten kilometers or five miles, sir.
THE COURT: -kilometers per hour or five miles per hour. Thank you. So, if the "standard" is all that's required and you had not this onerous burden as to the, the "guidance" also being required, and the guidance said, "at least once every five years, states and local agencies *"should,"* and I understand that the *"should"* can't be "may," "should" reevaluate non-statutory speed limits on segments of their roadways that have undergone a significant change in roadway

characteristics or surrounding land use since the last review." And I understand that that is binding - the city contends that the section of roadway in question has not undergone

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significant change in roadway characteristics or surrounding land use since the last review and the defendant asserts that it has.
MR. ROUNDS: Correct.
THE COURT: Well, I guess that's my other question then, why the second sentence under guidance, perhaps is not at issue here, speed limits displayed on one sign, then we have the third sentence, "the speed limit that is to be posted should, and the word "should", it should be within 10 kilometers, 5 miles an hour of the 85th percentile speed of free-flowing traffic." And I understand your contention there, that the city contends of course that the last study was done in 1990. That's why this is here; since there hasn't been a study since 1990. Perhaps we don't know, or perhaps we do not - the question of the speed limit that was set in this location.
Then I guess the "options." Again I'm not sure how the "guidance" and the "options" interact with the, the "standard," but the "Options" says, "other factors that may be considered in establishing of speed limits are as following." And I'm assuming that this "other factors" is saying factors in addition to the 85th percentile.
With all due respect to the Federal level, to Congress, the MUTCD itself is not well written, in my humble opinion. Maybe they would say the same thing about some of my humble opinions as well. "Other factors":

"road characteristics, shoulder conditions, grade alignment, and sight distance." I heard a little bit about sight distance through the consideration; road grab, "parking practices; you hit on these when you testified; "pace speed" - I'm not sure what that means; what pace speed is; "roadside development environment;" we have

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heard about that. I probably think that refers to the testimony of the developed subdivision at the time of the 1990 study and the streets in that section. "Parking practices and pedestrian activity:" I don't believe I've heard about that. "Reported crash experience for at least a 12-month period;" I think the officer testified, I don't think he specified a 12-month period, but there was crash experience. We then get to 2 types of speed limit signs which may be used. The changeable message signs. Then we get to "guidance," and the "guidance" appears to refer to the changeable message signs. "Support" - this is referenced to advisory speed signs. Maybe, with all due respect, this whole section may mean more to traffic engineers perhaps than it does to us lawyers and judges. And I, I do appreciate the, the issues.

And, I think, I come to the question, I guess, that I raised originally: If we find, and I'm not there, that the study should have been done, then we come to the conclusion certainly that the city's in violation of this. Do we necessarily come to the conclusion that the posted speed limits then are unenforceable and in effect we have no speed limit if the study's not done?

In fairness, I'm not sure I can come to that conclusion. I think first of all, I am bound by the

testimony given. I recognize that the testimony of Mr. Hooper, that in fact - he's familiar with the area, has lived here all his life. He has probably spent more time over on this side of town, in this area certainly than the court has. Although I am familiar with the area. Mr. Hooper has indicated that the development of the Wal-Mart and those businesses. I'm really more familiar with that end of Northfield, Rutherford, whatever you call it at that point, than I am going down by Park Avenue. But, certainly that the evidence does show that that

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is built up in that Wal-Mart area. In fairness I think the evidence shows also side areas where off to the side streets where there has not been substantially. In fairness, I think that if I were to jump to the conclusion that in fact it has changed substantially; I - without any disrespect to the officer or Mr. Richardson, or Mr. Hooper - would need some one to come in and explain to me what it is in fact that causes the triggering, if you will, of the new study. Certainly the, the "standards," appears has been met they got a, got an engineering study. [But] is the engineering study current? There is the suggested question. And part of that question is whether the "guidance" indeed is mandatory. If the guidance is in fact mandatory and we, come to the conclusion of that first sentence - roadway segments.

The guidance says, "segments of the roadways that have undergone significant change in roadway characteristics," - however you define them - "since the last review." What's a segment, how big does the segment have to be? Does the segment include the

Wal-Mart area? Does it include the churches as well that have developed on the other end? Does it include the parking lot in MTSU? What does it mean by "significant change?" As far as roadway characteristics are concerned, and we have talked about characteristics, we talked about the width of the road, the development of the road or are we looking at just the traffic flow? Traffic flow probably has increased; is that in itself a significant change or no? The significant change I think I think I'd also consider, also modify the words "surrounding land use" and I guess "segment" as far as the size of the area. I understand road growth still going on today as far as use is concerned - regional in terms of the segment. Look further, we have farmland apparently, or something of lesser use. There's now the Wal-Mart and those areas down there. We have

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the parking lot at MTSU and other parking lots.

I think in short, I think I still have to come back to the policy issue before me, my decision, to determine whether to enforce the speed limits or not enforce; and I understand that the - the fact that we need a speed limit. So I think I come to the bottom line that while I really appreciate the education that you folks have given me. Certainly this has been pretty instructive to me and ... I don't think I could find that the speed limits, the posted speed is invalid; and since it is not invalid, of course, I think I must find the defendant guilty.

END OF PROCEEDINGS

APPENDIX C: ORDER OF THE CIRCUIT COURT

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE AT MURFREESBORO

CITY OF MURFREESBORO	)	
Plaintiff	)	
	)	CASE NO. 53483
vs.	)	
ZOL HOOPER	)	
Defendant	)	

ORDER DISMISSING APPEAL

This cause came on to be heard before the Honorable Robert E. Corlew, III, Judge, on the 9th of August, 2006 upon presentation and argument of counsel, testimony of witnesses in open court, and the record as a whole from all of which it appears that the appeal is not well taken.

It is therefore, ordered, adjudged and decreed that this appeal is dismissed and the judgment of the City Court of Murfreesboro, Tennessee is reinstated. The costs are judged against the defendant for which let execution issue, if necessary.

Enter:

S_____
Judge
Robert E. Corlew, III

Approved For Entry:
S

Richard W. Rucker, BPR #2895

Attorney for City of Murfreesboro
111 West Vine Street, P. O. Box 331154
Murfreesboro, TN 37133-1154
(615) 217-3030

S (By permission)
Hal Rounds, Attorney for Defendant
P. O. Box 342
Somerville, TN 38068
(901) 485-5451

Minute Book 265 Page 1041
Sept 6, 2006.

APPENDIX C: ORDER OF SUPREME COURT OF TENNESSEE DENYING REVIEW

IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

CITY OF MURFREESBORO v. ZOL HOOPER

Circuit Court for Rutherford County
No. 53483

No. M2006-02050-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Zol Hooper and the record before us, the application is denied.

PER CURIAM

[STAMP] FILED
NOV 13 2007
Clerk of the Courts

APPENDIX E: Manual on Uniform Traffic Control Devices (MUTCD)

(Cited Sections only. Note: The FHWA does not publish the MUTCD in hard copy form; but maintains it on the MUTCD Web site. This may be accessed at http://mutcd.fhwa.dot.gov.)

2003 Edition Page I-1

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES
INTRODUCTION

Standard:

Traffic control devices shall be defined as all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or bikeway by authority of a public agency having jurisdiction.

The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Part 655, Subpart F and shall be recognized as the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices shall be as described in 23 CFR 655, Subpart F.

Any traffic control device design or application provision contained in this Manual shall be considered to be in the public domain. Traffic control devices contained in this Manual shall not be protected by a patent, trademark, or copyright, except for the Interstate Shield and any other items owned by FHWA.

Support:

The need for uniform standards was recognized long ago. The American Association of State Highway Officials (AASHO), now known as the American Association of State Highway and Transportation Officials (AASHTO), published a manual for rural highways in 1927, and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCSHS developed and published the original edition of this Manual on Uniform Traffic Control Devices (MUTCD) in 1935. That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTCD), though changed from time to time in name, organization, and personnel, has been in continuous existence and has contributed to periodic revisions of this Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were eight previous editions of the MUTCD, and several of those editions were revised one or more times. Table I-1 traces the evolution of the

MUTCD, including the two manuals developed by AASHO and NCSHS.

Standard:

The U.S. Secretary of Transportation, under authority granted by the Highway Safety Act of 1966, decreed that traffic control devices on all streets and highways open to public travel in accordance with 23 U.S.C. 109(d) and 402(a) in each State shall be in substantial conformance with the Standards issued or endorsed by the FHWA.

Support:

23 CFR 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The "Uniform Vehicle Code (UVC)" is one of the publications referenced in the MUTCD. The UVC contains a model set of motor vehicle codes and traffic laws for use throughout the United States. The States are encouraged to adopt Section 15-116 of the UVC, which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking, or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under Section 15-104."

The Standard, Guidance, Option, and Support material described in this edition of the MUTCD provide the transportation professional with the information needed to make appropriate decisions regarding the use of traffic control devices on streets and highways. The material in this edition is organized to better differentiate between Standards that must be satisfied for the particular circumstances of a situation, Guidances that should

be followed for the particular circumstances of a situation, and Options that may be applicable for the particular circumstances of a situation.

Throughout this Manual the headings Standard, Guidance, Option, and Support are used to classify the nature of the text that follows. Figures, tables, and illustrations supplement the text and might constitute a Standard, Guidance, Option, or Support. The user needs to refer to the appropriate text to classify the nature of the figure, table, or illustration.

Standard:

When used in this Manual, the text headings shall be defined as follows:

1. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All standards are labeled, and the text appears in bold type. The verb shall is typically used. Standards are sometimes modified by Options.

2. Guidance—a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled, and the text appears in unbold type. The verb should is typically used. Guidance statements are sometimes modified by Options.

3. Option—a statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. All Option

statements are labeled, and the text appears in unbold type. The verb may is typically used.
4. Support—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in unbold type. The verbs shall, should, and may are not used in Support statements.

...

CHAPTER 1A. GENERAL

Section 1A.01 Purpose of Traffic Control Devices

Support:

The purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets and highways throughout the Nation.

Traffic control devices notify road users of regulations and provide warning and guidance needed for the reasonably safe, uniform, and efficient operation of all elements of the traffic stream.

Standard:

Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.

Support:

Tourist-oriented directional signs and Specific Service signs are not considered advertising; rather, they are classified as motorist service signs.

Section 1A.02 Principles of Traffic Control Devices

Support:

This Manual contains the basic principles that govern the design and use of traffic control devices for all streets and highways open to public travel regardless of type or class or the public agency having jurisdiction.

This Manual's text specifies the restriction on the use of a device if it is intended for limited application or for a specific system. It is important that these principles be given primary consideration in the selection and application of each device.

Guidance:

To be effective, a traffic control device should meet five basic requirements:

A. Fulfill a need;
B. Command attention;
C. Convey a clear, simple meaning;
D. Command respect from road users; and
E. Give adequate time for proper response.

Design, placement, operation, maintenance, and uniformity are aspects that should be carefully considered in order to maximize the ability of a traffic control device to meet the five requirements listed in the previous paragraph. Vehicle speed should be carefully considered as an element that governs the design, operation, placement, and location of various traffic control devices.

Support:

The definition of the word "speed" varies depending on its use. The definitions of specific speed terms are contained in Section 1A.13.

Guidance:

The actions required of road users to obey regulatory

devices should be specified by State statute, or in cases not covered by State statute, by local ordinance or resolution consistent with the "Uniform Vehicle Code."

The proper use of traffic control devices should provide the reasonable and prudent road user with the information necessary to reasonably safely and lawfully use the streets, highways, pedestrian facilities, and bikeways.

Support:

Uniformity of the meaning of traffic control devices is vital to their effectiveness. The meanings ascribed to devices in this Manual are in general accord with the publications mentioned in Section 1A.11.

Section 1A.03 Design of Traffic Control Devices

Guidance:

Devices should be designed so that features such as size, shape, color, composition, lighting or retroreflection, and contrast are combined to draw attention to the devices; that size, shape, color, and simplicity of message combine to produce a clear meaning; that legibility and size combine with placement to permit adequate time for response; and that uniformity, size, legibility, and reasonableness of the message combine to command respect.

Standard:

All symbols shall be unmistakably similar to or mirror images of the adopted symbol signs, all of

which are shown in the "Standard Highway Signs" book (see Section 1A.11). Symbols and colors shall not be modified unless otherwise stated herein. All symbols and colors for signs not shown in the "Standard
Highway Signs" book shall follow the procedures for experimentation and change described in Section 1A.10.
Guidance:
Aspects of a device's design should be modified only if there is a demonstrated need.
Support:
An example of modifying a device's design would be to modify the Side Road (W2-2) sign to show a second offset intersecting road.
Option:
Highway agencies may develop word message signs to notify road users of special regulations or to warn road users of a situation that might not be readily apparent. Unlike symbol signs and colors, new word message signs may be used without the need for experimentation. With the exception of symbols and colors, minor modifications in the specific design elements of a device may be made provided the essential appearance characteristics are preserved. Although the standard design of symbol signs cannot be modified, it may be appropriate to change the orientation of the symbol to better reflect the direction of travel.

Section 1A.04 Placement and Operation of Traffic Control Devices
Guidance:
Placement of a traffic control device should be within

the road user's view so that adequate visibility is provided. To aid in conveying the proper meaning, the traffic control device should be appropriately positioned with respect to the location, object, or situation to which it applies. The location and legibility of the traffic control device should be such that a road user has adequate time to make the proper response in both day and night conditions.
Traffic control devices should be placed and operated in a uniform and consistent manner.
Unnecessary traffic control devices should be removed. The fact that a device is in good physical condition should not be a basis for deferring needed removal or change.

Section 1A.05 Maintenance of Traffic Control Devices
Guidance:
Functional maintenance of traffic control devices should be used to determine if certain devices need to be changed to meet current traffic conditions.
Physical maintenance of traffic control devices should be performed to retain the legibility and visibility of the device, and to retain the proper functioning of the device.
Support:
Clean, legible, properly mounted devices in good working condition command the respect of road users.

Section 1A.06 Uniformity of Traffic Control Devices
Support:
Uniformity of devices simplifies the task of the road user because it aids in recognition and understanding, thereby reducing perception/reaction time. Uniformity assists road users, law enforcement

officers, and traffic courts by giving everyone the same interpretation. Uniformity assists public highway officials through efficiency in manufacture, installation, maintenance, and administration. Uniformity means treating similar situations in a similar way. The use of uniform traffic control devices does not, in itself, constitute uniformity. A standard device used where it is not appropriate is as objectionable as a nonstandard device; in fact, this might be worse, because such misuse might result in disrespect at those locations where the device is needed and appropriate.

Section 1A.07 Responsibility for Traffic Control Devices

Standard:

The responsibility for the design, placement, operation, maintenance, and uniformity of traffic control devices shall rest with the public agency or the official having jurisdiction. 23 CFR 655.603 adopts the Manual on Uniform Traffic Control Devices as the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. When a State or other Federal agency

manual or supplement is required, that manual or supplement shall be in substantial conformance with the national Manual on Uniform Traffic Control Devices.

23 CFR 655.603 also states that traffic control devices

on all streets and highways open to public travel in each State shall be in substantial conformance with standards issued or endorsed by the Federal Highway Administrator.

Support:

The "Uniform Vehicle Code" (see Section 1A.11) has the following provision in Section 15-104 for the adoption of a uniform Manual:

"(a)The [State Highway Agency] shall adopt a manual and specification for a uniform system of traffic control devices consistent with the provisions of this code for use upon highways within this State. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, and other standards issued or endorsed by the Federal Highway Administrator."

"(b) The Manual adopted pursuant to subsection (a) shall have the force and effect of law."

Additionally, States are encouraged to adopt Section 15-116 of the "Uniform Vehicle Code," which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under Section 15-104."

Section 1A.08 Authority for Placement of Traffic Control Devices

Standard:

Traffic control devices, advertisements, announcements, and other signs or messages within

the highway right-of-way shall be placed only as authorized by a public authority or the official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

When the public agency or the official having jurisdiction over a street or highway has granted proper authority, others such as contractors and public utility companies shall be permitted to install temporary traffic control devices in temporary traffic control zones. Such traffic control devices shall conform with the Standards of this Manual.

Guidance:

Any unauthorized traffic control device or other sign or message placed on the highway right-of-way by a private organization or individual constitutes a public nuisance and should be removed. All unofficial or nonessential traffic control devices, signs, or messages should be removed.

Standard:

All regulatory traffic control devices shall be supported by laws, ordinances, or regulations.

Support:

Provisions of this Manual are based upon the concept that effective traffic control depends upon both appropriate application of the devices and reasonable enforcement of the regulations.

Section 1A.09 Engineering Study and Engineering Judgment

Standard:

This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation.

Guidance:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment.

Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement. Jurisdictions with responsibility for traffic control that do not have engineers on their staffs should seek engineering assistance from others, such as the State transportation agency, their County, a nearby large City, or a traffic engineering consultant.

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Section 1A.13 Definitions of Words and Phrases in This Manual

Standard:

Unless otherwise defined herein, or in the other Parts of this Manual, definitions contained in the most recent edition of the "Uniform Vehicle Code," "AASHTO Transportation Glossary (Highway Definitions)," and other publications specified in Section 1A.11 are also incorporated and adopted by reference.

The following words and phrases, when used in this

Manual, shall have the following meanings:

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25. Engineering Judgment—the evaluation of available pertinent information, and the application of appropriate principles, Standards, Guidance, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.

26. Engineering Study—the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, Standards, Guidance, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.

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79. Speed—speed is defined based on the following classifications:

(a) Advisory Speed—a recommended speed for all vehicles operating on a section of highway and based on the highway design, operating characteristics, and conditions.

(b) Average Speed—the summation of the instantaneous or spot-measured speeds at a specific location of vehicles divided by the number of vehicles observed.

(c) Design Speed—a selected speed used to determine the various geometric design features of a roadway.

(d) 85th-Percentile Speed—The speed at or below which 85 percent of the motor vehicles travel.

(e) Operating Speed—a speed at which a typical vehicle or the overall traffic operates. Operating speed might be defined with speed values such as the average, pace, or 85th-percentile speeds.

(f) Pace Speed—the highest speed within a specific range of speeds that represents more vehicles than in any other like range of speed. The range of speeds typically used is 10 km/h or 10 mph.

(g) Posted Speed—the speed limit determined by law and shown on Speed Limit signs.

(h) Statutory Speed—a speed limit established by legislative action that typically is applicable for highways with specified design, functional, jurisdictional and/or location characteristic and is not necessarily shown on Speed Limit signs.

80. Speed Limit—the maximum (or minimum) speed applicable to a section of highway as established by

law.
81. Speed Measurement Marking—a white transverse pavement marking placed on the roadway to assist the enforcement of speed regulations.
82. Speed Zone—a section of highway with a speed limit that is established by law but which might be different from a legislatively specified statutory speed limit.
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CHAPTER 2B. REGULATORY SIGNS

Section 2B.01 Application of Regulatory Signs
Standard:
Regulatory signs shall be used to inform road users of selected traffic laws or regulations and indicate the applicability of the legal requirements.
Regulatory signs shall be installed at or near where the regulations apply. The signs shall clearly indicate the requirements imposed by the regulations and shall be designed and installed to provide adequate visibility and legibility in order to obtain compliance.
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Section 2B.13 Speed Limit Sign (R2-1)
Standard:
After an engineering study has been made in accordance with etablished traffic engineering

practices, the Speed Limit (R2-1) sign (see Figure 2B-1) shall display the limit established by law, ordinance, regulation, or as adopted by the authorized agency. The speed limits shown shall be in multiples of 10 km/h or 5 mph.

Guidance:

At least once every 5 years, States and local agencies should reevaluate non-statutory speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review.

No more than three speed limits should be displayed on any one Speed Limit sign or assembly.

When a speed limit is to be posted, it should be within 10 km/h or 5 mph of the 85th-percentile speed of free-flowing traffic.

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Option:

Other factors that may be considered when establishing speed limits are the following:

A. Road characteristics, shoulder condition, grade, alignment, and sight distance;

B. The pace speed;

C. Roadside development and environment;

D. Parking practices and pedestrian activity; and

E. Reported crash experience for at least a 12-month period.

Two types of Speed Limit signs may be used: one to designate passenger car speeds, including any nighttime information or minimum speed limit that

might apply; and the other to show any special speed limits for trucks and other vehicles.
A changeable message sign that changes the speed limit for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times.
A changeable message sign that displays to approaching drivers the speed at which they are traveling may be installed in conjunction with a Speed Limit sign.
Guidance:
If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX km/h (MPH) or such similar legend should be shown. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.
Support:
Advisory Speed signs are discussed in Sections 2C.36 and 2C.46 and Temporary Traffic Control Zone Speed signs are discussed in Part 6.
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Sect. 2B.13 to 2B.14

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Section 2B.18 Location of Speed Limit Signs
Standard:
Speed Limit (R2-1) signs, indicating speed limits for which posting is required by law, shall be located at

the points of change from one speed limit to another. At the end of the section to which a speed limit applies, a Speed Limit sign showing the next speed limit shall be installed. Additional Speed Limit signs shall be installed beyond major intersections and at other locations where it is necessary to remind road users of the speed limit that is applicable.

Speed Limit signs indicating the statutory speed limits shall be installed at entrances to the State and at jurisdictional boundaries of metropolitan areas.

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Sect. 2B.17 to 2B.19

TENNESSEE CODE ANNOTATED

54-5-108. Cooperation by department with federal government in designating roads, and in erection of danger signals and safety devices. —

(a) (1) The department has full power, and it is made its duty, acting through its commissioner, to cooperate with the federal government in formulating and adopting a uniform system of numbering or designating roads of interstate character, within this state, and in the selection and erection of uniform danger signals and safety devices for the protection and direction of traffic on such highways.

(2) The department is empowered to expend out of the funds of the department any and all amounts necessary, in the carrying out of the provisions of this section.

(b) The department has full power, and it is made its duty, acting through its commissioner, to formulate and adopt a manual for the design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee, and no signs, signals, markings or postings of traffic regulations shall be located on any street or highway in Tennessee regardless of type or class of the governmental agency having jurisdiction thereof except in conformity with the provisions contained in such manual.

55-8-136. Drivers to exercise due care.
(a) Notwithstanding the foregoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.
(b) Notwithstanding any speed limit or zone in effect at the time, or right of way rules that may be applicable, every driver of a motor vehicle shall exercise due care to avoid colliding with any other motor vehicle, either being driven or legally parked, upon any roadway, or any road sign, guard rail or any fixed object legally placed within or beside the roadway right of way, by operating such motor vehicle at a safe speed, by maintaining a safe lookout, by keeping such motor vehicle under proper control and by devoting full time and attention to operating such motor vehicle, under the existing circumstances to avoid endangering life, limb or property.
(c) A violation of this section is a Class C misdemeanor.

Speed Limits - Penalties 55-8-152
a) Except as provided in subsection (c), it is unlawful for any person to operate or drive a motor vehicle upon any highway or public road of this state in excess of sixty-five miles per hour (65 mph).

(b) "Truck," as used in this section, means any motor vehicle of one and one-half (1 1/2) ton rated capacity or more.
(c) On all controlled-access highways with four (4) or more lanes, which are designated as being on the state system of highways or the state system of interstate highways, it is unlawful for any person to operate or drive a motor vehicle or a truck at a rate of speed in excess of seventy miles per hour (70 mph). In the left-hand lane of all controlled-access highways with four (4) or more lanes, which are designated as being on the state system of highways or the state system of interstate highways, it is unlawful for any person to operate or drive a motor vehicle at a rate of speed less than fifty-five miles per hour (55 mph).
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(f) (1) (A) Notwithstanding any provision of this section to the contrary, the department is authorized to lower the speed limits prescribed in this section, and on the state system of roads and highways, as it deems appropriate due to concerns regarding the roadway, traffic, or other conditions. Such authorization to reduce the speed limits set by this section shall be in addition to the authority conveyed by § 55-8-153.
(B) When the department shall determine that it is necessary to reduce the speed limits set in subsection (a), the commissioner shall so indicate the reduced speed limit via a letter of policy statement, and the commissioner shall cause signs indicating the new speed limit to be erected.
(C) Notwithstanding any other provision of this section to the contrary, the municipalities of the state

are hereby authorized to set speed limits on the public roads and streets within their jurisdiction and not a part of the interstate and national defense highway system nor any access controlled highway on the state road and highway system. In addition, the counties of this state are hereby authorized to set speed limits on the public roads and highways within their jurisdiction and not a part of the interstate or state highway system. The speed limits for both municipalities and counties shall not exceed fifty-five miles per hour (55 mph).

55-8-153. Establishment of speed zones.

(a) The department of transportation is empowered to lower the speed limits prescribed in § 55-8-152 in business, urban or residential districts, or at any congested area, dangerous intersection or whenever and wherever the department shall determine, upon the basis of an engineering and traffic investigation, that the public safety requires a lower speed limit.

(b) Appropriate signs giving notice thereof shall be erected by the department at such places or put on the highway where the prescribed speed limits are effective.

(c) The legislative authority of towns and cities shall possess the power to prescribe such lower speed limits within certain areas or zones, or on designated highways, avenues, or streets, in their respective jurisdictions, and to erect appropriate signs and traffic signals.

(d) The legislative body of any county, except the

legislative bodies of any counties having a commission form of government, has the power to prescribe such lower speed limits as it may deem appropriate on any road being maintained by such county and shall erect appropriate signs and traffic signals. In those counties having a commission form of government, the board of commissioners has the power prescribed in this section.

55-10-205. Reckless driving.

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property commits reckless driving.

(b) A person commits an offense of reckless driving who drives a motorcycle with the front tire raised off the ground in willful and wanton disregard for the safety of persons or property on any public street, highway, alley, parking lot, or driveway, or on the premises of any shopping center, trailer park, apartment house complex, or any other premises that are generally frequented by the public at large; provided, that the offense of reckless driving for driving a motorcycle with the front tire raised off the ground shall not be applicable to persons riding in a parade, at a speed not to exceed thirty miles per hour (30 mph), if the person is eighteen (18) years of age or older.

(c) A violation of this section is a Class B misdemeanor.

RULES OF TENNESSEE DEPARTMENT OF TRANSPORTATION

CHAPTER 1680-3-1

ADOPTION OF THE TENNESSEE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS

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1680-3-1-.01 APPLICABILITY.

These rules shall govern the design and location of all signs, signals, markings and postings of traffic regulations on or along all streets and highways in the State of Tennessee, and no signs, signals, markings or postings of traffic regulations shall be located on any street or highway in the State of Tennessee regardless of type or class of the governmental agency having jurisdiction thereof except in conformity with the current edition of the *Manual on Uniform Traffic Control Devices* (MUTCD), as adopted in these rules.

1680-3-1-.02 ADOPTION OF MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

The current edition of the United States Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices for*

Streets and Highways, 2003 Edition, is hereby adopted in its entirety and incorporated herein by reference.

1680-3-1-.03 ADOPTION OF FUTURE REVISIONS TO MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

It is the intent of the Tennessee Department of Transportation to amend these rules as necessary to adopt future revisions of the MUTCD as may hereafter be approved by the United States Department of Transportation, Federal Highway Administration.

1680-3-1-.04 STANDARD HIGHWAY SIGNS.

(1) The provisions of the MUTCD set forth the basic principles that govern the design and usage of the most commonly used highway signs. Detailed specifications for the layout of these signs are provided in the latest edition of the United States Department of Transportation, Federal Highway Administration, *Standard Highway Signs*, which is incorporated by reference in the MUTCD.

(2) Detailed specifications for other signs frequently used in the State of Tennessee, as may be required by statute or otherwise authorized by the MUTCD, are detailed in the *Tennessee Supplement to Standard Highway Signs*, which is published by the Tennessee Department of Transportation.

(3) The Tennessee Department of Transportation authorizes the design and usage of the signs in the *Tennessee Supplement to Standard Highway Signs*.

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